

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2004-266-T - ORDER NO. 2005-470

SEPTEMBER 7, 2005

IN RE:	Application of Kenneth M. Ellis d/b/a A & T)	ORDER GRANTING
	Specialty Movers for a Class E (HHG))	CLASS E CERTIFICATE
	Certificate of Public Convenience and)	
	Necessity for Operation of Motor Vehicle)	
	Carrier)	

This matter comes before the Public Service Commission of South Carolina (the "Commission") on the Application of Kenneth M. Ellis d/b/a A & T Specialty Movers ("Ellis" or "the Company" or "the Applicant"). The Applicant filed this Application with the Commission requesting a Class E Certificate of Public Convenience and Necessity to transport household goods as follows:

Household Goods, As Defined in R. 103-210(1):

Between points and places in Charleston, Berkeley, and Dorchester Counties, South Carolina to points and places in South Carolina.

The Commission's Transportation Department instructed the Applicant to publish a Notice of Filing in newspapers of general circulation in the service area desired. The Notice of Filing was published and instructed the public as to how to file pleadings to participate in the proceedings on the Application. No Petitions to Intervene were received in this matter.

APPLICABLE LAW

1. S.C. Code Ann. § 58-23-20 (Supp. 2004) provides in part:

No corporation or person, his lessees, trustees, or receivers may operate a motor vehicle for the transportation of persons or property for compensation on an improved public highway in this State except in accordance with the provisions of this chapter, except where the use of a motor vehicle is incidental only to the operation, and any such operation is subject to control, supervision, and regulation by the commission in the manner provided by this chapter.

2. S.C. Code Ann. § 58-23-40 (1976) provides:

No motor vehicle carrier shall hereafter operate for the transportation of persons or property for compensation on any improved public highway in this State without first having obtained from the Commission, under the provisions of Article 3 of this chapter, a certificate and paid the license fee required by Article 5.

3. S.C. Code Ann. § 58-23-590(A) (Supp. 2004) provides:

The commission shall promulgate regulations necessary to control entry and certification standards, set rates and charges, and establish enforcement procedures and powers to govern the operations of carriers of household goods and hazardous waste for disposal.

4. S.C. Code Ann. § 58-23-590(C) (Supp. 2004) provides:

The commission shall issue a common carrier certificate or contract carrier permit of public convenience and necessity if the applicant proves to the Commission that:

(1) it is fit, willing, and able to properly perform the proposed service and comply with the provisions of this chapter and the commission's regulations; and

(2) the proposed service, to the extent to be authorized by the certificate or permit, is required by the present public convenience and necessity.

The commission shall adopt regulations that provide criteria for establishing that the applicant is fit, willing, and able, and criteria for establishing that the applicant must meet the requirement of public convenience and necessity. The determination that the proposed service is required by the public convenience and necessity must be made by the commission on a case by case basis.

5. Following enactment of S.C. Code Ann. § 58-23-590, the Commission proposed amendments and changes to the Commission's regulations governing Motor Carriers. The amended regulations became effective in June 1998.

6. 26 S.C. Code Ann. Regs. 103-102(1) (Supp. 2004) defines "Certificate of PC&N" as

the certificate of public convenience and necessity authorized to be issued under provisions of Chapter 23 of Title 58 of the Code of Laws of South Carolina, 1976. Certificates of PC&N shall be required of all for-hire passenger carriers, household goods carriers (except those operating exclusively within the limits of any municipality), and hazardous waste for disposal carriers. Holders of Certificates of PC&N shall be considered regulated carriers.

7. 26 S.C. Code Ann. Regs. 103-102(5) (Supp. 2004) defines "Common Carrier by Motor Vehicle" as "any person¹ which holds itself out to the general public to engage in the transportation by motor vehicle in intrastate commerce of persons or property for compensation, whether over regular or irregular routes, except as exempted in Section 58-23-50 and Section 58-23-70 of Code of Laws of South Carolina, 1976."

¹ 26 S.C. Code Ann. Regs. 103-102(15) defines "person" as "any individual, firm, partnership, corporation, company, association, or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof."

8. A “Class E Motor Carrier” is defined in 26 S.C. Code Ann. Regs. 103-114 (Supp. 2004) as “a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle including a motor vehicle containing goods packed by a packing service. A Class E motor carrier must obtain either a Certificate of PC&N or FWA from the Commission.”

9. 26 S.C. Code Ann. Regs. 103-133 (Supp. 2004) is entitled “Proof Required to Justify Approving an Application” and provides in subsection (1) as follows:

(1) PC&N (Household Goods or Hazardous Waste for Disposal). An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier of household goods or hazardous waste for disposal by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service and that public convenience and necessity are not already being served in the territory by existing authorized service. The public convenience and necessity criterion must be shown by the use of shipper witnesses.² If the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to provide the requested service to the public:

- a. FIT. The applicant must demonstrate or the Commission determine that the applicant’s safety rating is satisfactory. This can be obtained from U.S.D.O.T. and S.C.D.P.S safety records. Applicants should also certify that there are no

² By Order No. 1999-654 dated September 15, 1999. (Docket No. 1999-376-T), the Commission approved a waiver of the shipper witness requirement for those applicants seeking authority in three counties or less. In approving the waiver for these applicants seeking such a limited scope of authority, the Commission considered the difficulty faced by “small carrier” applicants in providing appropriate shipper witnesses. By Order No. 2000-024 dated January 5, 2000, (Docket No. 1999-376-T), the Commission clarified its decision from Order No. 1999-654 to specifically state that the waiver of the shipper witness requirement applied only to those applicants requesting authority to transport household goods between points and places in three, or less, contiguous counties.

outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety operations in South Carolina and agree to operate in compliance with these statutes and regulations.

- b. ABLE. The applicant should demonstrate that he has either purchased or leased on a long-term basis necessary equipment to provide the service for which he is applying. Thirty days or more shall constitute a long-term basis. The applicant must undergo an inspection of all vehicles and facilities to be used to provide the proposed service. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission insurance requirements and the costs associated therewith.
- c. WILLING. Having met the requirements as to “fit and able,” the submitting of the application for operating authority would be sufficient demonstration of the applicant’s willingness to provide the authority sought.

10. 26 S.C. Code Ann. Regs. 103-134 (Supp. 2004) is entitled “When Hearing May Be Held” and provides in relevant part that “[w]hen an application for a Certificate of PC&N is submitted and there is no opposition, the Commission may hold a hearing if it deems necessary for the purpose as it shall determine, including the issue of fitness, willingness, or ability of the applicant to appropriately perform the proposed service, or the issue of whether public convenience and necessity are already being served.”

EVIDENCE OF RECORD

A hearing on the Application was held on January 13, 2005, at 2:30 PM in the offices of the Commission. The Honorable Randy Mitchell, Chairman, presided. The

Applicant Kenneth M. Ellis appeared pro se. Wendy B. Cartledge, Esquire, and Lessie Hammonds, Esquire, represented the Office of Regulatory Staff.

At the beginning of the hearing, Mr. Ellis downwardly amended his request for authority to transport household goods between points and places in Charleston, Berkeley, and Dorchester Counties, South Carolina.

Mr. Ellis presented testimony in support of his Application. He presently operates a business moving household goods in the Atlanta, Georgia area, and has fourteen years experience in the moving business. Mr. Ellis discussed his financial status and the fact that, although he owns one truck for his business in Georgia, he could purchase a new vehicle for South Carolina use if the Commission granted him the authority that he seeks. The Commission requested and received two late-filed exhibits in this matter. One exhibit constituted a revised financial statement. The other exhibit was a bill of sale, showing that Mr. Ellis had purchased a new truck for use in South Carolina.

Mr. Ellis also testified that there was clearly a need for another mover in the Charleston, Berkeley, Dorchester County area and that the public convenience and necessity would be served if he was granted his requested authority.

L. George Parker, Jr., Manager of the Transportation Department of the Office of Regulatory Staff, also testified. Parker discussed the equipment issue with regard to the Company and stated that he would like to inspect Mr. Ellis' truck prior to actual issuance of a Certificate, if the Commission granted the authority sought.

There were no intervenors in this matter and no testimony was offered in opposition to the Application.

FINDINGS OF FACT

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact:

1. The Applicant desires to provide moving services of household goods within and between points and places in Charleston, Berkeley, and Dorchester Counties, South Carolina.

2. The Applicant is fit, willing, and able to provide and properly perform the services which it seeks to provide. "Fitness" has been demonstrated since the record contains (1) a certification that the Applicant through its principal, is familiar with the regulations and statutes governing for-hire motor carrier services and (2) evidence that there are no outstanding judgments pending against the Applicant. "Able" was demonstrated by the evidence of record which reveals that the Applicant has the present ability to and has arranged for the necessary truck and equipment with which to perform moving services, and will obtain insurance which meets the minimum requirements set by this Commission, and is aware that it is required to undergo an inspection of its equipment. The evidence of record also indicates that the Applicant's principal owner possesses sufficient financial resources necessary to conduct for-hire motor carrier operations in South Carolina. The filing of the Application and the testimony of the Applicant demonstrated "Willingness" and the Applicant's desire to undertake this business venture in South Carolina.

3. The services proposed by the Applicant are required by the public convenience and necessity. We find that the witness presented establishes that the public

convenience and necessity warrant the issuance of the Certificate requested by the Applicant. We find the evidence of public convenience and necessity provided by the Applicant to be credible.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact and the applicable law, the Commission concludes as follows:

1. The Commission concludes that the Applicant has demonstrated that it meets the requirements of fit, willing, and able as set forth in 26 S.C. Code Ann. Regs. 103-133 (Supp.2004).

2. The Commission concludes that the Applicant has sufficiently demonstrated that the public convenience and necessity requires its proposed services as reflected in its application.

3. Based on the conclusions above, that the Applicant has demonstrated that it meets the requirements of fit, willing, and able and that it has demonstrated that the public convenience and necessity require the services it proposes, the Commission concludes that a Class E Certificate of Public Convenience and Necessity should be granted and that the Applicant should be authorized to provide moving services within the following operating scope:

Household Goods, As Defined in 26 S.C. Code Ann. Regs. 103-210(1):

Between points and places in Charleston, Berkeley, and Dorchester
Counties, South Carolina.

This grant of authority is contingent upon compliance with all Commission regulations, and the conditions outlined below.

IT IS THEREFORE ORDERED:

1. That the Application of Kenneth M. Ellis d/b/a A & T Specialty Movers for a Class E Certificate of Public Convenience and Necessity be, and hereby is, approved.

2. The Company shall file (if it has not already done so) with the Office of Regulatory Staff the proper insurance, safety rating, and other information required by S.C. Code Ann. Section 58-23-10 et. seq. (1976), as amended, and by 26 S.C. Code Ann. Regs. 103-100 through 103-241 of the Commission's Rules and Regulations for Motor Carriers, as amended, and 23A S.C. Code Ann. Regs. 38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, as amended, within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. Upon demonstration of its compliance with S.C. Code Ann. Section 58-23-10 et. seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S.C. Code Ann. Regs. Vol. 26 (1976), as amended, as well as the completion of a site visit by the Office of Regulatory Staff, a Certificate shall be issued by the Office of Regulatory Staff to the Company authorizing the motor carrier services granted herein.

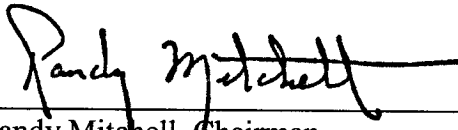
4. Prior to compliance with the above-referenced requirements and receipt of a Certificate, the motor carrier services authorized herein shall not be provided.

5. Failure on the part of Ellis either (1) to complete the certification process by complying with the Commission's requirements of causing to be filed with the Office of Regulatory Staff proof of appropriate insurance and an acceptable safety rating within

sixty (60) days of the date of this Order or (2) to request and obtain from the Commission additional time to comply with the requirements of the Commission as stated above, shall result in the authorization approved in the Order being revoked.

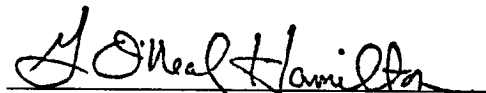
6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Randy Mitchell, Chairman

ATTEST:



G. O'Neal Hamilton, Vice Chairman

(SEAL)